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October 15, 2009

Office of the Comptroller of the Currency
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Washington, DC 20219
regs.comments@occ.treas.gov
Docket No. OCC-2009-0012

Mr. Robert E. Feldman
Executive Secretary, Attn: Comments
Federal Deposit Insurance Corp.
550 17th St, NW
Washington, DC 20429
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FDIC - RIN #3064-AD48

Department of the Treasury
Regulation Comments
Chief Counsel's Office
Office of Thrift Supervision
1700 G Street, NW
Washington, DC 20552
Regs.comments@ots.treas.gov
No. OTS-2009-0015

Jennifer J. Johnson
Secretary, Board of Governors of the
Federal Reserve System
20th Street and Constitution Ave., NW
Washington, DC 20551
regs.comments@federalreserve.gov
Docket No. R-1368

Subject: Joint Comments for "Risk-Based Capital Guidelines; Capital Adequacy Guidelines; Capital Maintenance; Impact of Modifications to Generally Accepted Accounting Principles; Consolidation of Asset-Backed Commercial Paper Programs; and Other Related Issues"

Ladies and Gentlemen:

BlackRock appreciates the opportunity to comment on the proposed changes to the regulatory capital requirements related to adoption of Statement of Financial Accounting Standard No. 167 ("SFAS No. 167") (ACS 810-10-15). As a global investment management firm, BlackRock, Inc. ("BlackRock") provides its clients with the opportunity to invest in an array of BlackRock managed products. In December 2009, BlackRock expects to close its previously announced purchase of the Barclays Global Investors ("BGI") asset management business, which will include the acquisition of Barclays Global Investors, National Association ("BGINA"). BGINA is a federally chartered, uninsured non-deposit taking / non-lending trust company, a member of the Federal Reserve System, and supervised by the Office of the Comptroller of the Currency ("OCC").

Upon adoption of SFAS No. 167, BlackRock, BGINA and other investment managers will be required to consolidate certain investment companies ("funds"), even though their economic involvement generally is limited to receiving a management fee and potentially a performance-based fee. Unlike other financial institutions that may transfer assets to a variable interest entity ("VIE"), provide liquidity guarantees to a VIE, or retain substantive interests in a VIE, BlackRock and BGINA serve exclusively in a fiduciary capacity on behalf of

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third party investors. BlackRock and BGINA will not be exposed to downside risk similar to a traditional debt or equity holder in a VIE; rather, their principal risk is the opportunity cost associated with a potential reduction in advisory and performance fees they may receive due to unfavorable market conditions and/or market performance.

BlackRock disagrees with the guidance in SFAS No. 167 that would require it and other asset managers to consolidate many of their managed funds and has been active both individually and as part of an Investment Managers' Working Group in communicating its concerns to both the Financial Accounting Standards Board ("the FASB") and the Office of the Chief Accountant of the Securities and Exchange Commission ("the SEC"). We have enclosed a copy of the presentation the Working Group shared with the FASB that outlines our concerns and provides proposed remedies.

We have included responses only to those questions that apply to BGINA and other asset managers performing in a similar capacity and regulated by the OCC.

Question 1: Which types of VIEs will banking organizations have to consolidate onto their balance sheets due to the 2009 GAAP modifications, which types are not expected to be subject to consolidation, and why? Which types are likely to be restructured to avoid consolidation?

Pursuant to SFAS No. 167, BGINA likely will be required to consolidate a significant number of funds to the extent that (1) a single equity investor in the fund does not have the ability to remove the investment manager and (2) BGINA has the right to potentially receive performance fees that may be significant to the VIE. Structures most likely to be consolidated include non-registered exchange traded funds, non-registered hedge funds, unit trusts and in certain cases, common and collective funds. Most funds for which investors do not pay performance fees will not require consolidation. We do not expect to restructure any of our funds in order to avoid consolidation because such restructuring would require manager approval and/or investor action to change the fundamental fee arrangement in order to provide a single equity investor with the ability to unilaterally remove the investment manager (which we believe would be contrary to good corporate governance).

Question 3: What effect will the 2009 GAAP modifications have on banking organizations' financial positions, lending, and activities?

BGINA's balance sheet under Generally Accepted Accounting Principles ("GAAP") will reflect a significant gross-up for consolidated funds that could equal a large multiple of its current assets, offset by non-controlling interests. Non-controlling interests in consolidated funds would be added back to the numerator to calculate Tier 1 and Total risk-based capital ratios. Assuming consolidated funds maintain their minimal leverage, this gross-up likely would *increase* BGINA's Tier 1 and Total risk-based capital ratios. As BGINA's consolidated funds generally would have non-controlling interests approximately equal to total assets, the numerator (non-controlling interests) will be equal to *or exceed* the denominator (risk-weighted and average total assets), resulting in a ratio for consolidated funds that may

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approximate or exceed 1:1. Alternatively, should BGINA be required to consolidate highly leveraged funds, the increase in risk-weighted and average total assets (the denominator) likely would exceed non-controlling interests (the numerator), thereby reducing BGINA's capital ratios and overstating its risk position. We therefore respectfully disagree with the agencies' suggestion in the release (last paragraph of Question 1) that the 2009 GAAP modifications will result in regulatory capital treatment that more appropriately reflects the risks to which banking organizations are exposed.

As noted in your release, "the risk-based capital rules adjust GAAP balance sheet inputs where appropriate to capture an exposure's risk or the ability of elements of capital to absorb loss." The release further notes specific examples where adjustments between GAAP balances and regulatory capital balances have been made in order to properly reflect an entity's risk exposure. We support the process of making adjustments in order to appropriately capture risk and, as a result, we recommend that consolidated VIE fund assets be excluded from the Tier 1 capital and Total risk-based capital ratios under the following conditions:

- The asset manager's economic involvement is limited to receiving a management and performance-based fee; that is, absent a substantive debt or equity investment or a support agreement, the manager has no downside exposure;
- The third party investors in the consolidated VIE have no recourse to the general credit of the bank; and
- The VIE's assets can only be used to settle the VIE's obligations.

We believe that the proposed rules could result in a significant misstatement of risk-based measures, ignoring the true economics of an investment manager's involvement with its managed funds. We believe others share our view, as noted in Standards & Poor's recent information update issued October 7th, 2009, regarding the impact of SFAS No. 167 on Asset Managers. It states that "… we will continue to ask companies to provide us with deconsolidated financial statements and related information in accompanying notes so that we can analyze, **from a ratings perspective, the asset manager's operating performance and financial profile separately from those of the funds that it manages and the companies in which it invests…"**

Question 4: In light of the potential impact at this point in the economic cycle of the 2009 GAAP modifications on regulatory capital requirements, the agencies solicit comment on whether there are significant costs and burdens (or benefits) associated with immediate application of the 2009 GAAP modifications to regulatory capital requirements. If there are significant costs and burdens, or other relevant considerations, should the agencies consider a phase-in of the capital requirements that would result from the 2009 GAAP modifications? Additionally, if a phase-in of the GAAP modifications is appropriate, what type of phase-in should be considered?

We have communicated to the SEC and the FASB that there are significant costs and burdens associated with the application of SFAS No. 167. Those burdens include consolidating funds based on estimated amounts and/or amounts that are on a time lag due to the funds' inability to prepare and deliver timely financial statements. The estimated fund amounts consolidated in BGINA's financial statements will be used to prepare the quarterly filing of the "Consolidated Reports of Condition and Income for a Bank with Domestic and Foreign Offices- FFIEC 031". As a result, the Tier 1 and Total risk-based capital ratio calculations will be impacted by any such delays and estimates.

The phased-in approach delays, but does not solve, the issue that regulatory capital calculations based on the amounts that include consolidated funds of an asset manager (doing business as a non-deposit taking/non-lending bank) results in a misstatement of a bank's economic exposure when its involvement is limited to receiving a management and performance-based fee. As a result, we do not support the phased-in approach.

We appreciate the opportunity to comment on the proposal. We would welcome the opportunity to further discuss our comments with you. Please do not hesitate to contact me at (212) 810-3501.

Sincerely,

Steven E. Buller
Managing Director